

The Federal Legal Framework for Child Welfare

By Kasia O'Neill Murray

The child welfare system consists of multiple federal, state, and local government agencies; the juvenile and family courts; and community-based, private social services agencies. States have primary responsibility for establishing the legal and administrative structures and programs to provide child welfare services. However, federal legislation and regulations establish a framework within which states make the programmatic and fiscal decisions that shape the national child welfare system. While this paper describes the current federal child welfare policy context, we note that within this framework there remains significant variation between states in their interpretation and implementation of federal policy. As a result, one state's child welfare system may differ significantly from another state's system.

The Department of Health and Human Services (HHS) is the principal federal agency that regulates and funds federal child welfare programs. However, the Department of Justice and seven other federal agencies also fund various child welfare-related programs. The sheer number of federal child welfare-related programs (over 30) and agencies involved in the child welfare system reflects the piecemeal nature of the legislative history of child welfare.

The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) established the framework for the modern child welfare system. Below we discuss the major legislative developments since the enactment of this landmark legislation.

The Adoption and Safe Families Act

The Adoption and Safe Families Act of 1997 (Public Law 105-89) made the most significant changes to the child welfare provisions since they were established in their modern form in 1980. Known as ASFA, the Act principally addressed three general perceptions about the current child welfare system:

- Children continued to remain too long in foster care;
- The child welfare system was biased toward family preservation at the expense of children's safety and well-being; and
- Inadequate attention and resources were devoted to adoption as a permanent placement option for abused and neglected children.

Promoting Permanency. ASFA included three key provisions to encourage states to move children from foster care into safe, permanent placements more quickly. These include:

- A provision establishing certain exceptions to the existing requirement that states make "reasonable efforts" to preserve and reunify families. This provision was intended to give states the flexibility and authority to expedite permanent placements under specified egregious circumstances—for example, in cases where the parent has murdered the child's sibling, or subjected the child to abandonment, torture or sexual abuse.

- A provision that shortened the time frames under which states must make decisions about a child's permanency. In particular, permanency decisions must now be made no later than 12 months after placement, instead of the prior 18-month requirement. (Some states have shorter time frames.)
- The "15 of 22" provision, which generally requires states to initiate the termination of parental rights (TPR) for children who have been in foster care for 15 of the previous 22 months. Additionally, once the TPR is initiated, states must make reasonable efforts to achieve permanency for the child.

Promoting Adoption. The Act also contained several provisions to promote adoption. In particular, ASFA created the adoption incentive payment program, which rewards states that increase their rates of adoption of children from foster care (above specified baselines). States receive additional awards for increasing the adoption rates for foster children with special needs (again, above specified baselines).

Promoting Safe and Stable Families. Under ASFA, the existing Family Preservation and Family Support Services Program was reauthorized, renamed, and expanded to include funding for (1) time-limited family reunification services and (2) adoption promotion and support activities. (The new program, Promoting Safe and Stable Families (PSSF), continued to set aside \$10 million for the existing Court Improvement Program.) In 2001, Congress again reauthorized the program, authorizing new discretionary funding (up to \$200 million above the existing \$305 million mandatory funding floor), and emphasizing the importance of post-adoption assistance and substance abuse treatment.

Child and Family Services Reviews. Emphasizing the importance of holding states accountable for achieving positive outcomes for children and families, and acknowledging the failure of earlier accountability mechanisms, ASFA required a national child welfare monitoring system. Known as the Child and Family Services Reviews, this system requires states to make program improvements as needed or face financial penalties. By 2004, all states will have completed their initial reviews.

Waiver Expansion. Finally, ASFA expanded the existing waiver demonstration program. The original waiver program, which was established by the Social Security Amendments of 1994, gave HHS authority to approve demonstration projects in up to 10 states. The program was designed to enable states to test innovative approaches to delivering and financing child welfare services, with the goal of producing better outcomes for children. ASFA authorized up to 10 additional waivers each year for five years (1998 through 2002). Each demonstration project must be independently evaluated, last no longer than five years, and must demonstrate cost-neutrality (that is, they must not result in greater federal costs than would have occurred in the absence of the waiver).

Implementation of ASFA

Since ASFA was enacted, adoptions from foster care have increased nationwide by 57 percent. However, due to limited comparison data, the extent to which these trends are a direct result of ASFA is unclear. Similarly, it is still too early to determine ASFA's impact on other child outcomes.

Congressional Focus Since ASFA

Key child welfare legislation enacted since ASFA has focused on (1) providing independent living assistance to youth who transition out of the foster care system and (2) helping family courts achieve the permanency goals established by ASFA. In addition, several proposals to restructure child welfare financing have been introduced since ASFA became law.

Foster Care Independence. The Foster Care Independence Act of 1999 (Public Law 106-169) replaced the Independent Living Program, established in 1986, with the John H. Chafee Foster Care Independence Program (CFCIP). CFCIP expanded the range of social services available to (1) former foster youth (age 21 or younger) who have aged out of the foster care system and (2) adolescents who are transitioning from foster care to self-sufficiency. As amended in 2001, authorized services now include:

- Vouchers for educational and vocational training, up to \$5,000 per year;
- Financial and housing assistance; and
- Counseling and other support services needed to help current and former foster youth successfully transition to independence.

In addition to increasing state authority to deliver supportive services, CFCIP gives states the option to provide continuing Medicaid coverage to certain former foster youth. While the program targets emancipated and emancipating foster youth, CFCIP was specifically designed as a *service* option for states, rather than a permanency option for foster youth.

Strengthening Abuse and Neglect Courts. The Strengthening Abuse and Neglect Courts Act of 2000 (SANCA, Public Law 106-314) authorized a relatively small grant program for state and local courts to:

- Reduce the backlog of abuse and neglect cases by hiring additional court personnel or lengthening court hours;
- Improve individual case monitoring and expedite the flow of cases through the court system by automating case-tracking and data-collection systems; and
- Train Court-Appointed Special Advocates (CASA) volunteers to give children support during the court proceedings.

No funding was appropriated for SANCA in its first year of authorization (FY 2001). In FY 2002 and again in FY 2003, Congress appropriated \$2 million for the program.

Court Improvement Program. The 2001 amendments to the Promoting Safe and Stable Families (PSSF) program reauthorized the \$10 million set-aside for the Court Improvement Program, and expanded the scope of authorized activities. The amendments also authorized a new set-aside, which is 3.3 percent of all *discretionary* PSSF funding.

Frequent amendments to the legislation discussed above indicate ongoing Congressional interest in child welfare policy. To some extent, these changes are a reflection of states' early experiences in implementing ASFA.